

PT 97-35
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE ORCHESTRAL)	
ASSOCIATION,)	Docket No: 94-16-925
APPLICANT)	
)	
v.)	Real Estate Exemption
)	for 1994 Tax Year
)	
DEPARTMENT OF REVENUE)	P.I.N.S: 17-15-105-001
STATE OF ILLINOIS)	and
)	17-15-105-005
)	
)	
)	Alan I. Marcus,
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Donald Schramm of Rief & Scanlon and Ms. Margaret E. Graham of Mayer, Brown & Platt appeared on behalf of the Orchestral Association.

SYNOPSIS: These proceedings raise the limited issue of whether one or both of the subject parcels were in exempt use, and therefore, qualify for exemption from 1994 real estate taxes under 35 ILCS 200/15-65.¹ In relevant part, that provision states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

¹. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 et seq).

(a) institutions of public charity.

The controversy arises as follows:

On January 19, 1995, the Orchestral Association (hereinafter the "Association" or the "applicant") filed a real estate exemption complaint with the Cook County Board of Tax Appeals (hereinafter the "Board"). Said complaint sought to exempt Permanent Index Numbers 17-15-105-001 through and including 17-15-105-008² under 35 **ILCS** 205/19.1 and 35 **ILCS** 205/19.7.³

The Board reviewed applicant's complaint and recommended to the Department of Revenue (hereinafter the "Department") that "no action" be taken on the requested exemptions because applicant had not established the parcels' "complete final use." (Dept. Group Ex. No. 1).

On November 30, 1995, the Department partially accepted this recommendation by issuing a certificate denying exemption to all parcels except Permanent Index Number 003. The Department specifically based this decision on a finding that parcels 001, 002, 004, 005, 006, 007 and 008 were not in exempt use during 1994.

On December 20, 1995, the Association filed a timely request for hearing as to all parcels that the Department found to be non-exempt. After holding a pre-trial conference, the Administrative Law Judge conducted an evidentiary hearing on January 6, 1997. At the hearing, the Association made an on the record motion to withdraw its appeals as to all parcels except Permanent Index Numbers 001 and 005. (Tr. p. 9). The ALJ granted applicant's motion and, with

². Each of the eight Index Numbers begins with the same seven digits, to wit, "17-15-105." In the interest of administrative economy, therefore, I shall hereinafter refer to each parcel only by the last four digits of its Permanent Index Number. Thus, for example, Permanent Index Number 17-15-105-001 shall hereinafter be referred to as "001."

³. The provisions found in sections 19.1 and 19.7 of the Revenue Act of 1939 (35 **ILCS** 205/1 *et seq.*) are, for present purposes, substantially similar to those contained in sections 200/15-35 (exemption pertaining to property of "schools") and 200/15-65 (exemption pertaining to "institutions of public charity") of the Property Tax Code. Because Bracher requires that this case be adjudicated under the Property Tax Code, I shall cite to the appropriate provisions of that statute throughout the remainder of this Recommendation.

counsel's approval, clarified the record by noting that the denials concerning Permanent Index Numbers 002, 004, 006, 007 and 008 were no longer at issue in these proceedings. (*Id.*).

Following submission of all evidence and a careful review of the record, it is recommended that neither parcel 001 nor parcel 005 be exempt from real estate tax for the 1994 assessment year.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that parcel numbers 001 and 005 were not in exempt use during 1994, are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.

2. Applicant is an Illinois not-for-profit corporation whose articles of incorporation date to October 16, 1890. Its corporate purposes, which focus on promoting musical art by all lawful means, have remained intact despite numerous amendments to the original articles of incorporation. Applicant Group Ex. No. 1, Documents 1-A through 1-C and 1-G.

3. The Association is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. It is also exempt from paying Use and related taxes in the State of Illinois. Applicant Group Ex. No. 1, Documents 1-E and 1-F.

4. Applicant serves as the parent organization of the Chicago Symphony Orchestra, the Civic Orchestra of Chicago, the Chicago Symphony Chorus and the Allied Arts Association. It owns the property commonly known as Orchestra Hall, which is located at 220 South Michigan Ave, Chicago, IL. Tr. pp 16 - 17, 29, 60.

5. All properties listed in applicant's original exemption complaint (including those not currently at issue) are located in Chicago, Illinois. They are situated on the west half of the city block bounded on the north by Adams Street, on the west by Wabash Avenue, on the south by Jackson Boulevard and on

the east by that portion of Michigan Ave which surrounds Orchestra Hall. Dept. Group Ex. No. 1; Applicant Ex. No. 3; Tr. p. 25.

6. The specific properties at issue are commonly known as 201-207 South Wabash and 53 West Adams in the case of parcel 001 and 221-223 South Wabash in the case of parcel number 005. Dept. Group Ex. No. 1; Tr. p. 9.

7. The Association obtained its ownership interest in these parcels via a special warrantee deed dated February 22, 1994. Applicant Ex. No. 2; Tr. p. 25.

8. Applicant acquired these properties as part of a long-term project to renovate and expand Orchestra Hall. The entire project, which the Association expects will be completed in the summer of 1997, includes demolition of certain structures located on its properties, renovation of the auditorium and other areas currently located in the existing Orchestra Hall and expansion of the entire facility through new construction. Applicant Ex. No. 11; Tr. pp. 16 - 17.

9. The Association undertook the following specific segments of this multi-phase project during 1994: first, it completed the land purchase transaction and acquired financing; second, it obtained a schematic design; third, it began the process of design development; fourth, it began working on zoning problems with the appropriate authorities; fifth, it began demolition where appropriate and sixth, it began the process of obtaining construction drawings. Applicant Ex. No. 11.

10. Applicant continued to implement various phases of the program throughout 1995 and 1996. It finalized guaranteed contracts, constructed foundations and obtained steel materials during 1995. The Association began undertaking most of the remaining phases⁴ in 1996 and targeted same for completion in 1997. *Id.*

⁴. For a detailed synopsis of the remaining phases, which included erecting steel support structures, repairing the facade of Orchestra Hall and summer construction in 1996 and 1997, see, Applicant Ex. No. 11.

11. At the time of acquisition, parcel 001 was improved with an eight-story brick building fronting on Wabash and Adams, with the rear portion of the building reduced to three floors. It contained 23,000 square feet of leasable area as of the date of acquisition. Approximately 58% of this space, or 13,289 feet, was actually leased. The remaining 42% was vacant. Applicant Ex. No. 9; Tr. pp. 54 - 56, 74.

12. 21 different tenants held leaseholds on the demised portions of parcel 001. While the ground floor was used for retail space, the area above street level was used for office space. Applicant Ex. No. 9; Tr. pp. 55, 73.

13. By December 31, 1994, all of leasable space in parcel 001 was entirely vacant. Applicant did not relet any of this space and allowed the non-leased portions of the building to remain vacant. Applicant Ex. No. 9; Tr. p. 74.

14. Parcel 005 was improved with an 18,126 square foot building, one half which occupied the subject parcel. The remaining half of this one story structure occupied the adjacent parcel 006. Tr. p. 56.

15. Approximately 10% of the total building area (or 1,800 square feet) was leased to a retail tenant, La Salle Discount (hereinafter "La Salle") as of the date applicant assumed title. This leasehold occupied approximately one half of the ground floor of that portion of the building located on parcel 006 and did not terminate until La Salle vacated the premises on January 31, 1995. Applicant Ex. No. 10; Tr. pp. 56, 75.

16. The remaining half of ground floor space, or 4,513.5 square feet⁵ was located on parcel number 005. It was vacant when applicant acquired ownership

⁵. I derived the 4,531.5 sq. ft. figure by the multiplying the total building area (18,126 sq. ft.) by .50 to arrive at the total building area located on parcel 005, which amounts to 9,063 sq. ft. and then multiplying that figure by .50, or that portion of the ground floor which is located on parcel 005. Thus, the product of 9,063 sq. ft. x .50, (or 4,531.5 sq. ft.), is equal to the total amount of first-floor building space located on parcel 005.

and remained in that condition throughout the 1994 assessment year. Tr. pp. 56, 75.

17. The roof level of parcel 005 was leased to Mid-City Parking, Inc, an Illinois for-profit corporation (hereinafter "Mid-City") and used as a commercial parking lot during the entire 1994 tax year. Applicant Ex. Nos. 10, 18; Tr. p. 73.

18. Applicant's lease with Mid-City is not scheduled to expire until August 31, 1997. Its terms provide that Mid-City is prohibited from using the demised premises for any purpose other than operating a commercial parking lot and providing ancillary services in connection therewith. Applicant Ex. No. 18.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting parcels 001 and 005 from 1994 real estate taxes. Accordingly, under the reasoning given below, the Department's findings that these parcels were not "... exclusively used for charitable or beneficent purposes..." within the meaning of 35 ILCS 200/15-65 during 1994 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions

If one divides the 4,531.5 sq. ft. figure by the total amount of square footage located on parcel 005, (9,063 sq. ft.), it can also be seen that the former accounts for 50% of the square footage located on parcel 005.

permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 et seq. The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/15-65. In relevant part, that provision states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

35 **ILCS** 200/15-65.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordlund v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968) (hereinafter "Nordlund"); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran

Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the appropriate exemption pertains to "institutions of public charity." Illinois courts have long refused to apply this exemption absent suitable evidence that property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968), (hereinafter "Korzen"). In its decision dated November 30, 1995 (Dept. Ex. No. 2), the Department concluded this applicant was an "institution of public charity" as to parcel 003. I shall leave the Department's finding undisturbed and confine any remaining discussion to the use issue.

Analysis of that topic begins with recognition of some fundamental principles. First, "evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose." Therefore, the "[i]ntention to use is not the equivalent of actual use." Skil Corporation v. Korzen, 32 Ill.2d 249 (1965) (hereinafter "Skil"); Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

In Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987), the court held that a portion of appellant's health care facility could be exempted from real estate taxes even though it was under construction during the year in question. While the Weslin Properties holding makes clear that the "charitable use" requirement can be satisfied where the applicant proves that the subject parcel is being developed for exempt purposes, the Association's evidence as to parcel 001 is speculative, and therefore, legally insufficient to establish that applicant was engaging in appropriate development of that parcel during 1994.

Applicant's comptroller, Patrick Furlong, testified that "the westernmost portion of [parcel 001] has no immediate use identified to it...[.]" (Tr. p. 79). He further testified that this parcel was unoccupied as of the date of hearing and that the Association had no immediate plans to build on it. (Tr. pp. 87 - 88). Mr. Furlong did nevertheless indicate that while parcel 001 "might" serve as a courtyard facility to the other surrounding buildings, the Association was considering other options and had no immediate plans for its use. (Tr. pp. 87 - 89).

The speculative tenor of this testimony fails to clearly and convincingly establish that parcel 001 was being developed for exempt use during 1994. It also falls short of proving that this parcel will be developed for a specifically identifiable exempt use at some definite point in the future. Accordingly, I cannot conclude that parcel 001 satisfies the requirements for exempt use established in Weslin Properties. Therefore, I recommend that the Department's decision as to that parcel be affirmed.

In contrast, I note that Mr. Furlong testified that parcel 005 will be included in, and eventually occupied by, the expansion of Orchestra Hall itself. (Tr. p. 79). However, 13,594 of the 18,126 square feet of the building located on parcels 005 and 006 (or 75% thereof) was leased to commercial entities throughout the 1994 assessment year.

Illinois courts have long held that leasing for rent is an inherently profit oriented, and therefore non-exempt, use of real estate. People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924), (hereinafter "Baldwin"); Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135 (1934); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988). These holdings, combined with the occupancy schedule (Applicant Ex. No. 10), the lease requiring Mid-City to operate a commercial parking lot on the roof of parcel 005 until August 31, 1997 (Applicant Ex. No. 18) and Mr. Furlong's testimony (Tr. pp. 56, 73, 75), establish that 75% of the total

building area was not in exempt use during 1994. Therefore, those portions of the Department's decision pertaining to that same 75% should be affirmed.

The preceding analysis does not address whether 4,531.5 square feet located on the ground floor of parcel 005 was in exempt use. This portion (which constitutes the remaining 25% of total available building space and 50% of the total square footage located on parcel 005) was vacant, and therefore not leased for rent, during 1994. As such, Baldwin and its progeny pose no barrier to exempting this particular portion. Nevertheless, our courts have recognized that vacancy neither constitutes an exempt use nor alleviates the above-stated actual use requirement. See, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (hereinafter "AMBC").

In AMBC, the court confronted the issue of whether a property owned by appellant's church could qualify for exemption even though it was boarded up and vacant during the years in question. In holding in the negative, the court relied on Skil, *supra* and other cases which imposed actual use requirements.⁶

The instant case is factually similar to AMBC in that applicant did not actually use or begin developing the non-leased portion of parcel 005 throughout the entire 1994 tax year. Rather, the Association merely took a series of steps (acquiring necessary financing, obtaining schematic drawings, etc.), which manifested its intent to develop the parcel *after* that particular assessment year ended. Thus, although applicant clearly intended to develop the non-leased portion in 1994, such intent, standing alone, does not establish that this portion was used for exempt purposes during that time.

While applicant attempts to refute the above analysis by relying on Weslin Properties, *supra*, I find that case to be factually distinguishable from the present situation in that there, the appellant actually began physical adaptation of the exempt portion (through construction of berms, etc.) during the year in question. Here, the Association did not make any such adaptations on

⁶. For further discussion of these cases, see, *infra*, p. 8.

the unleased portion of parcel 005 in 1994. Consequently, Weslin Properties does not require that such portion be exempted from real estate taxes for any part of the 1994 assessment year. Therefore, that part of the Department's decision which pertains to the unleased portion of parcel 005 should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that parcels 001 and 005 not be exempt from real estate taxes for the 1994 assessment year.

Date

Alan I. Marcus
Administrative Law Judge